

1 THE HONORABLE BENJAMIN H. SETTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 FRANCISCAN HEALTH SYSTEM d/b/a
13 CHI FRANCISCAN HEALTH;
FRANCISCAN MEDICAL GROUP; THE
DOCTORS CLINIC, A PROFESSIONAL
CORPORATION; and WESTSOUND
ORTHOPAEDICS, P.S.,

16 Defendants.

Case No. 3:17-cv-05690-BHS

DEFENDANT WESTSOUND
ORTHOPAEDICS, P.S.'S MOTION TO
COMPEL DOCUMENT PRODUCTION
FROM, AND A DEPOSITION OF,
THIRD-PARTY DAVITA, INC. D/B/A
DAVITA MEDICAL GROUP

**NOTED FOR HEARING:
NOVEMBER 2, 2018**

17 **I. INTRODUCTION AND REQUESTED RELIEF**

18 WestSound Orthopaedics, P.S. ("WestSound") seeks an order compelling third-party
19 DaVita, Inc. ("DaVita") to comply with WestSound's subpoenas seeking documents and a
20 deposition, which are important to the defense of this antitrust litigation. DaVita has failed or
21 refused to respond to the subpoenas.

22 **II. FACTUAL BACKGROUND**

23 On September 13, 2018, WestSound caused to be served on DaVita a Subpoena to
24 Produce Documents and a Subpoena to Testify at a Deposition on its registered agent in
25 Wilmington, DE. The Subpoena required DaVita to produce the following documents by
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DEFENDANT WESTSOUND ORTHOPAEDICS, P.S.'S MOTION TO
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SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
1420 5th Avenue, Suite 3400
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Telephone: 206.622.1711

September 24, 2018:

1. Documents sufficient to show your consideration or execution of plans and strategies to attract patients from Kitsap County, and the extent to which those plans and strategies have been successful.

2. Documents sufficient to show your consideration or execution of plans to expand your presence in Kitsap County, including plans to employ physicians in Kitsap County or build or acquire healthcare facilities in Kitsap County.

3. Documents reflecting your high-level strategic plans in and around the Puget Sound area.

4. Documents reflecting your analysis of competition between you, Franciscan, TDC, WSO, and/or other Providers in the Relevant Area

5. Documents identifying the healthcare providers employed by or affiliated with you that spend at least one day per month working out of an office located in Kitsap County.

The subpoena to testify required DaVita to appear on October 8, 2018. *Declaration of Matthew Turetsky in Support of Motion to Compel*, Ex. A.

DaVita has not produced any documents or in any way responded to the subpoena. It did not appear on October 9, 2018 for its deposition. WestSound's counsel has made efforts through several channels to reach out to DaVita regarding its failure to comply, but DaVita has not responded to its efforts. *Declaration of Matthew Turetsky in Support of Motion to Compel,*

III. ARGUMENT

Rule 45 of the Federal Rules of Civil Procedure governs discovery of nonparties by subpoena. Under Rule 45(d)(2)(B)(i), “at any time, in notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.” WestSound respectfully requests the Court to compel DaVita’s compliance with WestSound’s subpoenas.

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1 DaVita Medical Group is a division of DaVita Inc., a Fortune 500 company, that
2 operates and manages medical groups and affiliated physician networks in California,
3 Colorado, Florida, Nevada, New Mexico, Pennsylvania and Washington. In September 2015,
4 DaVita acquired The Everett Clinic, which operates 20 health care sites north of Seattle. In
5 November 2017, DaVita acquired Northwest Physicians Network (NPN), an independent
6 physician association (IPA) network in the Pacific Northwest, with its headquarters in Tacoma,
7 and which has physicians in nearly every county in Washington, including Kitsap County.
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9 *Declaration of Matthew Turetsky in Support of Motion to Compel, Ex. B.*

10 The documents and testimony requested are highly relevant and important to
11 WestSound's defense. The extent to which new competitors might enter the relevant market
12 can be a critical issue in cases brought under antitrust laws. Davita's plans to enter or expand
13 into or around Kitsap county, in concert with its other recent expansion plans in Western
14 Washington, including its 2016 acquisition of the Everett Clinic and 2017 acquisition of
15 Northwest Physicians Network, are highly relevant to this case.

17 **IV. CONCLUSION**

18 WestSound respectfully requests that the Court enter the proposed order attached
19 herewith requiring DaVita, Inc. to produce the requested documents no later than 20 days from
20 the date of the Court's order, and to appear for a deposition within 30 days of the from the date
21 of the Court's order.

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26 DEFENDANT WESTSOUND ORTHOPAEDICS, P.S.'S MOTION TO
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1 Dated this 12th day of October, 2018.
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SCHWABE, WILLIAMSON & WYATT, P.C.

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5 By: /s/ Matthew Turetsky
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States and State of Washington that the foregoing is true and correct.

I hereby certify that on 12th day of October, 2018, I electronically filed the following

**DEFENDANT WESTSOUND ORTHOPAEDICS, P.S.'S MOTION TO COMPEL
DOCUMENT PRODUCTION FROM, AND A DEPOSITION OF, THIRD-PARTY
DAVITA, INC. D/B/A DAVITA MEDICAL GROUP** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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CERTIFICATE OF SERVICE - 1

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